

ISSUES

The Special Administrative Law Judge awarded claimant benefits based on a 12 percent permanent partial general disability. The Award also states claimant is entitled to future medical upon proper application to and approval by the Director and awards claimant certain unauthorized medical expenses. Respondent asked the Appeals Board to review the findings relating to the nature and extent of disability and claimant's entitlement to compensation for future medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the reasons stated below, the Appeals Board finds claimant's award should be reduced to a 6 percent permanent partial general disability. The Appeals Board agrees with the finding claimant is entitled to future medical upon proper application and approval by the Director.

Respondent has stipulated that claimant met with personal injury by accident on March 28, 1994, and has stipulated to the other elements of compensability. Claimant, a certified nurse's aide, testified that she injured her back while attempting to transfer a patient from a wheelchair to a bed.

The dispute in this case focuses on a videotape surveillance of the claimant. The videotape shows claimant's activities at a lake fishing and camping with other members of her family. It shows her sitting and getting up from a chair, sitting on and standing up from the ground, and carrying her young niece. It also shows her bending to pick things up off the ground and from inside an automobile.

The videotape was shown to four physicians who had examined and evaluated claimant's impairment. Three of these physicians, Dr. Doug Frye, Dr. Ernest R. Schlachter, and Dr. Vito J. Carabetta, testified that claimant's activities on the videotape were completely inconsistent with her behavior and complaints at the time of their examinations. Dr. Schlachter concluded claimant had no permanent impairment. Dr. Frye and Dr. Carabetta indicated they would not be able to rate claimant's impairment, and in Dr. Carabetta's case, he concluded claimant would be entitled to a zero percent rating under the AMA Guides to the Evaluation of Permanent Impairment. The fourth physician, Dr. Peter V. Bieri, testified that claimant's activities on the tape were not inconsistent with either the restrictions previously recommended by other physicians or his examination and findings. He concluded claimant has a 12 percent general body impairment and viewing the activities in the videotape did not alter that opinion.

The Special Administrative Law Judge agreed with Dr. Bieri's testimony. The Special Administrative Law Judge did not consider the activities in the videotape to be inconsistent with a 12 percent permanent partial general body impairment. After viewing the videotape and other portions of the record, the Appeals Board agrees in part and disagrees in part with the conclusion by the Special Administrative Law Judge. The Appeals Board agrees that the activities in the videotape did not establish that claimant has no permanent impairment from the injury. However, her activities in the videotape are, in our opinion, inconsistent not only with her complaints but also with the 12 percent rating.

Based on the activities in the videotape, as well as the findings by the various physicians upon examination, the Appeals Board concludes claimant's award should be reduced to one for 6 percent permanent partial general disability.

The Appeals Board also believes the evidence establishes that claimant may need further medical treatment. On the other hand, none is currently specifically recommended. The Appeals Board, therefore, affirms the decision by the Special Administrative Law Judge to award future medical benefits upon proper application to and approval by the Director.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge Douglas F. Martin dated May 21, 1996, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Patty S. Burgess, and against the respondent, Brookside Manor, and its insurance carrier, Insurance Company of North America, for an accidental injury which occurred March 28, 1994, and based upon an average weekly wage of \$236.30 for 4.57 weeks of temporary total disability compensation at the rate of \$157.54 per week or \$719.96, followed by 24.9 weeks of permanent partial general body disability at the rate of \$157.54 per week or \$3,922.75, for a 6% permanent partial general body disability, making a total award of \$4,642.71, which is due and owing and ordered paid in one lump sum less any amounts previously paid.

Future medical treatment will be considered upon proper application to and approval by the director.

All other orders of the Administrative Law Judge are incorporated and adopted by the Appeals Board.

Claimant has also established her entitlement to reimbursement for unauthorized medical amounts up to the statutory limits.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent and insurance carrier as stated in the Award by the Administrative Law Judge.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Marcia L. Yates, Kansas City, MO
Floyd V. Palmer, Administrative Law Judge
Douglas F. Martin, Special Administrative Law Judge
Philip S. Harness, Director